IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8876 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAJAPATI KANTIBHAI PRABHUDAS

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8876 of 1998

MR MM PRAJAPATI for Petitioner No. 1-2

MR PRADIP D BHATE A.G.P. for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 03/02/2004

ORAL JUDGEMENT

The grievance of the petitioners is that though they have been selected to be appointed on Class-IV post in Government Boys' and Girls' Hostel in Valsad and Dang

Districts as "Cook", they have been given employment on the daily wage basis. Their further grievance is that their selection was made and way back in June, 1992, they had been continued as daily wager on the said post for long and their request to regularised their service was not acceded to. Hence, they were constrained to file this petition.

2. In support of their contentions, the petitioners have produced on record, order dated 15th June, 1992 which clearly shows that they have been appointed as daily wager by the Social Welfare Department of the State of Gujarat, on condition that they could be relieved from the service with immediate effect upon selected candidate being available. It appears that despite the fact that they were selected on regular basis, they were appointed as daily wager in view of the Circular issued by the State Government to minimize the expenditure, and for that purpose decision was taken not to appoint any person on the said post on regular basis. It is stated by the learned counsel appearing for the petitioners that even today, the petitioners are working on daily wage basis as "Rasoeya" i.e. "Cook" in Class-IV category.

2.1. The respondents have not filed any affidavit-in-reply to challenge the averments made by the petitioner in this petition.

3. Mr.Prajapati learned advocate for the petitioners has submitted that though the petitioners have been duly appointed after the selection by the Social Welfare Department by following the due procedure, their services are not been regularised, only on account of 1991 Circular of the State Government which had issued direction not to make such appointment on regular basis with a view to curtail the expenditure. His submission is that even today, the petitioners are working as daily wager and they are being appointed from time to time with intermittent artificial breaks which is not permissible in law. Lastly, he has submitted that the petitioners service are required to be regularised since they have been working on these posts from 15th June, 1992. In respect of his contention, he has placed reliance on the judgment of this Court rendered in the case of Anyabhai Manchhibhai Chaudhary v. State of Gujarat dated 27th July, 2001.

3.1. As against that Mr. Pradip Bhate learned A.G.P. appearing for the respondents has submitted that the temporary appointment has been given only because of the Circular issued by the State Government with a view to

curtail the expenditure and when the petitioners have accepted the appointment on such terms, they cannot now make grievance and demand regularization of their service.

4. Having gone through the record of the petition and having carefully considered the submissions of both the sides, it is clear that the petitioners who have been appointed way back on 15th June, 1992 as "Cook" for the kitchen of the Boys and Girls Hostel, situated in Valsad and Dang area, have been discharging their duties as daily wager. It appears that the post of "Cook" is a regular post in Class-IV service. It is also clear from the petition that the petitioners were duly selected to be appointed on these posts. When the regular procedure has been followed to make an appointment on a regular basis, it was incumbent upon the respondents to appoint them on regular basis and not on daily wage basis. May be that in view of the Circular that was issued in the year 1991, such decision was taken to appoint them on daily wage basis, it is totally wrong on the part of the respondents to continue them to appoint on daily wage basis even till today i.e. 12 years after the initial appointment. It is well settled principle of law and the Apex Court has time and again said that the persons cannot be continued on daily wage basis for long and their service were required to be regularised. In one such decision rendered by the Apex Court in the case of U.P. Income Tax Department Contingent Paid Staff Welfare Association v. Union of India & Ors., reported in 1988 (56) F.L.R. 121, the same principle has been laid down.

4. The learned Single Judge of this Court (Coram : P.K. Sarkar, J.) in the aforesaid decision has laid down as under :-

> In all these judgments, this Court uniformly held that when the petitioners were regularly selected for appointment against regular posts, they should not have been appointed on daily wage basis and, therefore, in some cases, the Court has passed order for regularization of appointment in regular pay-scale of Class-IV posts from the date of Government order i.e. 6-4-1994, by which it was proposed to terminate the services of the petitioners, and in some cases from the date of service of notice of rule on the respondents.
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> I have gone though the judgment of all these cases passed by this Court from time to

time. These petitioners are squarely covered by the decisions of the aforesaid cases. It is submitted by Mr.Mishra learned counsel for the petitioners that the petitioners were appointed in the year 1992 and they have been still serving as daily wagers and thereby the Government have exploited their helplessness by not giving the regular pay-scale of Class-IV staff.

I have also heard Mr. V.M. Pancholi learned A.G.P. appearing on behalf of the State. Mr, Pancholi submits that because of the ban of appointments, even though the petitioners were selected for appointment on regular basis, they were offered to serve as daily wagers, which they have accepted and, therefore, they should not claim their regularization from the date of appointment. It appears that the orders of regularization have been passed in this Court in various earlier cases, which reached its finality and the Government did not file any appeal against those judgments and the petitioners of those judgments have been regularised by the Government. In view of this, I am of the view that all these petitioners in this batch of petitions are also similarly situated. Accordingly, the respondents are directed to regularize the services of the petitioners from the date of their juniors were regularly appointed in Class-IV posts and the fixation shall be made notionally After notional fixation from the date of regularization, they will get financial benefits from today i.e. 27-7-2001. Since they have agreed to work as daily wage workers, I am of the view that they should not get the financial benefits till today."

5. I am in entire agreement with the aforesaid judgment of the learned Single Judge. In view of the settled principle of law, in my opinion, the petitioners ought to have been regularised on their respective posts long back. However, that has not been done. It also appears that except the Circular of 1991, there is no other reason for not doing so. Atleast the same has not been placed on record by the respondents by filing affidavit-in-reply. In the case of Kirtikumar S. Thakore v. Director in Special Civil Application No. 7156 of 1996 the learned Single Judge (Coram : S.K. Keshote, J.) by decision dated 22nd April, 1999 had held that Government Circular containing direction/ instructions to its departments with regard to curtailing

expenditure by not making appointment on permanent basis cannot be a ground for denying such benefit i.e. regularization of service several years after issuance of such Circular.

In view of the aforesaid, this petition is required to be allowed and it is hereby ordered to be allowed with a direction that respondents should regularize the service of the petitioners from the date of filing of this petition on the post in Class-IV and their fixation shall be made notionally. After notional fixation from the date of regularization, they will get financial benefits from today i.e. 3rd February, 2004. The respondent is also directed to carry out this exercise within three months from today. Rule is made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

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